IN THE U.S DISTRICT COURT

SOUTHERN DISTRICT, TEXAS (CORPUS CHRISTI)

COLLINS O. NYABWA(Plaintiff)

VS

FACEBOOK(Defendant)

42 U.S.C. § 1983 COMPLAINT AND BRIEF IN SUPPORT THEREOF

COLLINS O. NYABWA

PLAINTIFF (*PRO SE*)

4213 S. PORT AVENUE

P.O. BOX 71889

CORPUS CHRISTI, TX 78467

BACKGROUND

1. On 11/24/2016 plaintiff registered an internet domain name called "emolumentsclause.com". "Emoluments Clause" has become a popular phrase after the election of Donald J. Trump on November 8, 2016 because his Presidency appears headed for major business conflict of interest issues. Plaintiff intended his website to become a hub of information regarding President Trump's business conflicts of interest.
2. On 11/25/2016 Plaintiff set up a Twitter account with the same name "Emoluments Clause". Plaintiff's Twitter account is still up and running.
3. On 11/26/2016 Plaintiff set up a Facebook account with the same name "Emoluments Clause". Plaintiff has a link to his website("www.emolumentsclause.com") on his Facebook Profile page. Facebook also has plaintiff's cell phone number on file.
4. After running without incident, Facebook without warning, locked plaintiff's account at around 2pm on Sunday 12/4/2016. When plaintiff attempted to log into his account he was met with the message "For security reasons your account is temporarily locked".
5. Facebook asked plaintiff to upload to their website a Government Issued Photo ID.
6. Plaintiff uploaded his valid Texas Driver License leaving absolutely NO DOUBT as to his identity.
7. Even after providing Facebook with a valid Texas Driver License, plaintiff is still locked out of his Facebook page. It is very clear that Facebook is not worried about plaintiff's identity, but is rather punishing plaintiff because of the content of his political speech. These unconstitutional actions (after submitting Government ID) form the basis of this

42 U.S.C. §1983 complaint. **Simply stated, the defendant's actions after plaintiff provided a valid ID are unconstitutional.**

DIVERSITY JURISDICTION

8. Federal diversity requirements of 28 U.S.C. § 1332. Under Section 1332, a district court has jurisdiction over civil matters "where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between citizens of different States." A federal diversity action requires complete diversity. See *Stiftung v. Plains Mktg*., L.P., 603 F.3d 295, 297 (5th Cir. 2010).

9. This is a $10 million civil suit brought against Facebook, a corporation domiciled in Menlo Park, California. Plaintiff is a long-time resident of the state of Texas and has never visited or lived in California. Federal diversity jurisdiction therefore applies.

VENUE

10. Since October 2016, plaintiff has been working and residing in Corpus Christi, which is in Nueces County, Texas. Venue is therefore proper

ARGUMENT

11. As stated in the procedural history, plaintiff set up a Facebook page called "Emoluments Clause" on 11/26/2016. Plaintiff is the author of a political website www.emolumentsclause.com.

12. To promote his website, plaintiff has established similarly named Social Media accounts—"Emoluments Clause" on Twitter[1] (Handle @Emolclause), "Emoluments Clause" on Youtube[2] and "Emoluments Clause" on Facebook.

13. To Plaintiff's surprise(delightful), the Facebook account has received tremendous traffic in the few days it has been operational (less than a week).

14. The biggest traffic came on Sunday 12/4/2016 after plaintiff posted a story about Dr. Jill Stein's appearance on Fox News Sunday with Chris Wallace. **Plaintiff's post was VERY SUPPORTIVE of Dr. Jill Stein's recount efforts.**

15. Plaintiff's Facebook post received numerous comments and was shared many times. Sadly, the popularity of plaintiff's political Facebook page has become a double-edged sword putting him in the cross-hairs of "Free Speech Chillers"—Facebook Administrators and possibly their law enforcement counterparts[3].

16. At around 2pm on Sunday 12/4/2016 when plaintiff tried to log into his Facebook page, he was met with the notice "For security reasons your account is temporarily locked". It's not clear how plaintiff's exercise of his legitimate First Amendment rights degenerated into a "security concern". **The only logical explanation for this DRASTIC action is that Facebook is TOTALLY OPPOSED to Dr. Jill Stein's recount efforts, and plaintiff, a sympathizer to her cause became the object of their fury.**

17. Facebook asked plaintiff to upload a Government issued photo ID which plaintiff did. At the time of uploading the photo ID, Facebook was already in possession of plaintiff's cell

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[1] https://twitter.com/Emolclause
[2] https://www.youtube.com/channel/UCOQEYWGQzfOWMRiAHQZAuHQ
[3] http://venturebeat.com/2014/05/15/how-the-nsa-fbi-made-facebook-the-perfect-mass-surveillance-tool/

phone number, website domain name(emolumentsclause.com) and the associated email address—all of which left NO DOUBT WHATSOEVER as to plaintiff's identity. Even after all this information, plaintiff's account remains locked.

18. **Reasonable jurists will agree that Facebook Administrators (and their law enforcement conterparts) are not worried about plaintiff's identity but rather the content of his political speech. Specifically, plaintiff's Facebook account is locked SOLELY because he is engaging in political speech that Facebook Administrators want to silence**. Facebook's actions violate the U.S. Constitution in several ways;

19. **First Amendment Freedom of Speech and Association**—It is settled law that punishing someone for engaging in legitimate[4] speech violates their freedom of speech. Locking or otherwise suspending an account amounts to punitive action. Political speech is protected under the 1st Amendment.

20. The defendants cannot demonstrate that plaintiff engaged in ANY political speech that is not protected by the 1st Amendment

21. Locking plaintiff out of his account also prevents him from associating with his friends in violation of his 1st Amendment **Freedom of Association.**

22. **Due Process Violation**—There is a well-established due process doctrine that an accused shall be given a fair chance to defend his actions before any punitive action is taken.

[4] Certain kinds of speech are not protected by the 1st Amendment

23. In this case, if Facebook had "security concerns" because they could not verify plaintiff's identity, they should have sent a warning stating that if plaintiff failed to comply, they would lock his account.

24. **The defendants however did the complete opposite. They meted punishment (locked my account) then proceeded to ask about my identity (prove my innocence). Reasonable jurists will agree that this is a clear cut Due Process violation**

25. **Racial Discrimination**—It is a well-established fact that Facebook and other Social media companies are increasingly working with law enforcement officers.

26. It is also well established in civil rights circles[5] that the subjects of "security concerns" tend to be disproportionately ethnic minorities. In this case, if Plaintiff had been a white man, his popular political Facebook page would be hailed as a success by the defendants.

27. However, because he is a black man, his popular political views become a "security concern" deserving an immediate shut down.

28. Reasonable jurists will agree that the defendant's "lock-down" practices amount to racial discrimination, and violate the 14th Amendment

29. **Finally, plaintiff's complaint could provide a unique window into the national security/social media nexus. Americans are increasingly concerned at the alarming rates at which law enforcement officers inject themselves in people's personal conversations. When even mundane political discussions on social media platforms**

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https://www.aclu.org/issues/national-security/privacy-and-surveillance[5]

become subjects of "security concerns" requiring people to go through rigorous and needless authentication procedures, it's time for a national debate.

30. **Simply stated, if Facebook has been given enough information to positively identify the source of the postings on its social platform, it should not interfere with people's conversations and associations.**

RELIEF SOUGHT

31. Plaintiff has suffered severe emotional and psychological anguish as a result of being targeted by the defendants for his political speech. As an immigrant and a minority, the thought that your political speech makes you a "security concern" and possibly the subject of law enforcement monitoring is extremely scary.
32. Plaintiff seeks $10,000,000(10 million dollars) in monetary damages for the needless infringement of his constitutional rights.by the defendants.

JURY TRIAL

33. Plaintiff requests a trial by jury for all issues so triable

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JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS COLLINS O. NYABWA

(b) County of Residence of First Listed Plaintiff NUECES
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

DEFENDANTS FACEBOOK

County of Residence of First Listed Defendant SAN MATEO COUNTY
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☑ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)* *(For Diversity Cases Only)*

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	■ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☑ 5
Citizen or Subject of a Foreign Country	☑ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☑ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☑ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*: 42 U.S.C 1983

Brief description of cause: FIRST AMENDMENT, DUE PROCESS & RACIAL DISCRIMINATION

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $ 10,000,000 (10 MILLION)

CHECK YES only if demanded in complaint: JURY DEMAND: ☑ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ______ DOCKET NUMBER ______

DATE 12/5/2016 SIGNATURE OF ATTORNEY OF RECORD [signature] NYABWA PLAINTIFF PROSE

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______